

**SYNOPSIS OF CRIMINAL OPINIONS IN THE MISSISSIPPI SUPREME COURT  
HANDED DOWN APRIL 15, 2010**

***Willie L. Williams, Jr. v. State***, No. 2009-KA-00080-SCT (April 15, 2009)

**CRIME:** Attempted Robbery

**SENTENCE:** 15 years with 10 to serve and 5 on post-release supervision

**COURT:** Sunflower County Circuit Court

**TRIAL JUDGE:** Hon. Richard A. Smith

**APPELLANT ATTORNEY:** Erin Elizabeth Pridgen

**APPELLEE ATTORNEY:** W. Glenn Watts

**DISTRICT ATTORNEY:** Willie Dewayne Richardson

**DISPOSITION:** Reversed and Remanded. Kitchens, J., for the Court. Waller, C.J., Graves, P.J., Dickinson, Lamar, Chandler and Pierce, JJ., Concur. Carlson, P.J., Specially Concurs with Separate Written Opinion Joined by Waller, C.J., Dickinson, Randolph, Lamar and Pierce, JJ.

**FACTS:** On March 22, 2007, Stephanie Cannon was working in her store, Stephanie's Discount Store in Ruleville. A young man entered and inquired about a certain brand of jeans. Moments later, another man, his face covered with a white shirt, entered the store and pointed a handgun at her. Cannon immediately grabbed her handgun and commenced shooting. Both men fled the store, and, in the process, one dropped a firearm just inside the doorway. When one of the men came back to retrieve the weapon, Cannon shot him. The wounded man ran across the street, leaving a trail of blood. Police found Terrence Young wounded and lying on the ground behind a nearby house. Later that day, Montreal Veal went to the police station looking for Young, who was his cousin. Neal was arrested after he told police that Young and Willie Williams had attempted to rob Cannon's store, but that he, Veal, was not involved. Williams was also questioned and arrested, but he denied any involvement in the attempted robbery. Young told the police, and testified at trial, that he, Veal, and Williams, had attempted to rob Cannon's store. Veal's testimony was similar to Young's. Williams testified in his own defense, maintaining that Veal and Young were the only two involved in the crime. Cannon could not identify the robbers.

**ISSUE:** Whether the trial judge erred in refusing a cautionary jury instruction regarding accomplice testimony.

**HELD:** The Supreme Court attempted to clarify the test of when a cautionary accomplice jury instruction must be given. In the past, cases have confused the test concerning when "unreasonable" "self contradictory" or "substantially impeached" accomplice testimony can support a conviction, and when a cautionary accomplice instruction is required. The test for whether evidence is sufficient to support a conviction is more stringent than the test for whether the evidence warrants a cautionary jury instruction.

==>To the extent that other cases suggest that accomplice testimony must be "unreasonable,

self-contradictory, or substantially impeached" before a cautionary jury instruction is required, they are overruled. "We now clarify that for a defendant to be entitled to a cautionary jury instruction, it is only necessary that the accomplice's testimony be uncorroborated."

==>In determining whether a cautionary jury instruction is required, the testimony that must be corroborated is the testimony tying the defendant on trial to the crime, and it is irrelevant whether other portions of the accomplice's testimony are corroborated.

==>In this case, there was nothing, other than Young and Veal's testimony, tying Williams to the crime. Without their statements, the evidence would have been insufficient to support a conviction. When the only evidence against the defendant is the testimony of an accomplice, the trial judge must grant a requested cautionary jury instruction. Furthermore, testifying accomplices cannot corroborate each other sufficiently to obviate the necessity of a cautionary jury instruction.

**Carlson, P.J., Specially Concurring:**

==>A trial judge has only two questions to answer in making a determination as a matter of law on whether an accomplice instruction should be given. First, the trial judge must determine whether the target witness for whom the cautionary instruction is being considered is an accomplice. If so, then the second question is whether the accomplice's testimony is uncorroborated.

==>"The only time a trial judge is required to consider the issue of whether an accomplice's testimony is unreasonable, self-contradictory, or substantially impeached is when the trial judge is confronted with a defense motion for a directed verdict during trial, or a post-trial motion for judgment notwithstanding the verdict which challenges the legal sufficiency of the evidence."

==>"In sum, I would encourage our trial judges to give accomplice instructions without hesitation when justified by the evidence and the applicable law. If error is to be made when considering a properly worded accomplice instruction, err on the side of giving the accomplice instruction."

**Personal Note:** Justice Carlson gives a recommended sample accomplice instruction in his concurrence, but frankly, it seems to confuse what the Court just clarified. Here is the proposed instruction:

The Court instructs the jury that John Doe is an accomplice in this case. The Court has already instructed you that you, as jurors, are the sole judges of the weight and credit to be assigned the testimony and supporting evidence of each witness who has testified in this case. However, since John Doe is an accomplice in this case, any testimony of John Doe which you find to be uncorroborated by other evidence should be viewed with great caution and suspicion if you find such uncorroborated testimony to be unreasonable, self contradictory, or substantially impeached.

To read the full opinion, click here:

<http://www.mssc.state.ms.us/Images/HDList/..%5COpinions%5CCO61219.pdf>

**Thomas Edwin Loden, Jr. v. State**, No. 2007-DR-01758-SCT (April 15, 2010)

**CRIME:** PCR - Capital Murder

**SENTENCE:** Death

**COURT:** Itawamba County Circuit Court

**TRIAL JUDGE:** Hon. Thomas J. Gardner, III

**APPELLANT ATTORNEY:** Glenn Swartzfager, Charles E. Patterson, Charles S. Barquist, Mark R. McDonald, Olga A. Tkachenko, and Elina Kreditor

**APPELLEE ATTORNEY:** Marvin L. White, Jr.

**DISTRICT ATTORNEY:** John R. Young

**DISPOSITION:** Post-Conviction Relief Denied. En Banc. Randolph, Justice, for the Court. Waller, C.J., Carlson and Graves, P.JJ., Dickinson, Lamar, Kitchens, Chandler and Pierce, JJ., Concur.

**FACTS:** On September 21, 2001, Thomas E. Loden, Jr., an eighteen-year veteran of the United States Marine Corps, waived his right to a jury at trial and sentencing, and pleaded guilty to capital murder, rape, and four counts of sexual battery. The circuit court sentenced Loden to death. Subsequently, Loden filed a "Motion to Vacate Guilty Plea" only as to capital murder conviction and sentence. Loden maintained that his guilty plea was based upon trial counsel's erroneous advice that he could still appeal adverse rulings on pre-trial motions after entering the guilty plea. The circuit court dismissed Loden's motion for post-conviction relief. Loden's direct appeal of his conviction and sentence, and his appeal of denial of his PCR were consolidated by the SCT. The SCT affirmed the trial judge dismissal of his PCR. **Loden v. State**, 971 So. 2d 548 (Miss. 2007). Loden subsequently filed a second PCR.

**ISSUES:** (1) Loden was denied his constitutional right to effective assistance of counsel; (2) Loden's guilty plea was not knowing, voluntary or intelligent; (3) Loden was denied effective assistance of appellate counsel; (4) The State's use of the expert psychiatric report from Dr. McMichael violates the Eighth Amendment's reliability requirement, the Sixth Amendment's confrontation clause, and due process; (5) Loden's waiver of jury for sentencing was not voluntary, knowing and intelligent; and (6) Loden has been denied his Fourteenth Amendment due process right to fully develop and present the evidence in his case.

**HELD:** Loden was not denied effective assistance of counsel. Counsel will not be held to be ineffective for complying with the client's clear and unambiguous instruction not to present evidence. Given Loden's expressed desire at the time to receive the death penalty, counsel were not ineffective for recommending Loden waive a jury sentencing. Counsel were not ineffective for failing to cross-examine witnesses during sentencing and for stipulating to the State psychiatric report. Counsel only acted in accord with Loden's instructions.

==>Counsel were not ineffective for failing to adequately litigate a motion for funds for expert mitigation assistance. This issue was raised on direct appeal and is barred as *res judicata*. Loden's

claim that he received erroneous advice from counsel on his appeal rights was also addressed on direct appeal and is barred. Trial counsel affidavits could have been obtained prior to filing the first direct appeal and PCR. Loden fails to show a different result would have occurred.

==>Counsel were not ineffective for failing to have Loden evaluated by an independent psychologist without delay. Loden's argument is moot because of his decision not to present mitigation evidence. Loden can not establish prejudice even if counsel were deficient.

==>Counsel were not ineffective in failing to adequately challenge the State's evidence during pre-trial hearings. This was a backdoor challenge to his guilty plea and is procedurally barred. It is also barred as it could have been raised on his first PCR.

==>There was no cumulative error by counsel.

==>Loden's guilty plea was knowing, voluntary and intelligent. This issue is procedurally barred as *res judicata*.

==>Loden was not denied effective assistance of appellate counsel. Loden's guilty plea was voluntary. Therefore, Loden is not entitled to relief on this issue.

==>Loden is not entitled to any relief based on Dr. Michael's report, which contained several unsupported allegations of criminal behavior. The record does not indicate the court had the full report, only a summary. The issue is also barred, as it could have been raised in the first PCR. Furthermore, Loden instructed his counsel not to object to any evidence presented at sentencing. Finally, the court had sufficient evidence to give Loden the death penalty without the Whitfield report.

==> As stated above, it is clear Loden knowingly, intelligently, and voluntarily waived jury sentencing.

==>Loden was not denied due process because he was not allowed production of the complete files maintained by the DA, including color copies of all autopsy photographs and other photos of the deceased's body. However, PCR counsel did have access to this evidence and his experts were allowed to view them. Loden's access was merely limited, which was perfectly permissible in light of the sensitive nature of the evidence.

==>Finally, Loden's trial counsel destroyed his case file after taking a position with the district attorney's office. He stated he felt this was the best way to protect his client in case the file fell into someone else's hands. Although this was "poor judgment," Loden's other counsel had most of the same information. Loden failed to show any prejudice.

To read the full opinion, click here:

<http://www.mssc.state.ms.us/Images/HDList/..%5COpinions%5CCO62689.pdf>

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